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April 13, 2017

**VIA EMAIL**

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20436

Re: *MUR 7223*

Dear Mr. Jordan:

We are counsel to Applegate for Congress ("AFC" or the "Committee"), Jennifer May in her official capacity as Treasurer, and Colonel Douglas L. Applegate (collectively, "Respondents"). We write in response to the complaint filed by James V. Lacy on March 10, 2017 ("the Complaint"), which was received by Respondents on March 29, 2017. The Complaint provides no basis for its assertions that Respondents knowingly and willfully filed false reports; and while AFC's former political reporting consultant caused the Committee to omit several disbursements on its disclosure reports, the Committee corrected these omissions *sua sponte* before it learned about this Complaint. Accordingly, we respectfully request that the Commission close this matter.

AFC is the principal campaign committee of Col. Douglas L. Applegate, who was a first-time candidate for public office in the 2016 election. In order to ensure that it filed timely and accurate disclosure reports with the Commission, AFC, like many committees, contracted with an outside compliance firm, Crummitt & Associates, to handle its accounting and prepare its disclosure reports. AFC provided the firm's principal, Gary Crummitt, with ongoing access to the information he needed to prepare AFC's reports, reconcile them to bank statements, and file them timely. Among his duties was to review AFC's bank accounts for disbursements and input that activity into the filing software that he would use to file AFC's reports with the Commission. Crummitt & Associates holds itself out as having extensive experience providing

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reporting and other compliance services for political campaigns. See <http://crummittandassociates.com/>.

As is frequently the case, AFC paid for television media buys by wire transfer. AFC specifically notified Crummitt of this fact, and instructed him to review AFC's bank information to make sure that all wires were reported to the Commission. Despite this specific instruction, as Respondents later learned, Crummitt failed to enter several disbursements into AFC's campaign reporting software during the Pre-General reporting period. The vast majority of this was due to a \$93,629.25 wire disbursement to New Media on October 3.

After the November 2016 election, in mid-November, AFC, dissatisfied with Crummitt's performance to date, retained a new professional compliance firm, Next Level Partners ("Next Level"), to take over the accounting and reporting for the committee beginning with the committee's Post-General Report. AFC repeatedly asked Crummitt to provide it with access to the campaign finance database software that he used to prepare the reports, but he did not do so until February of 2017. Accordingly, before it filed the Post-General Report, Next Level had to recreate AFC's reporting database from scratch from the committee's banking and other records, all in short order. In the process, some additional disbursements were inadvertently omitted. The majority of this was due to a \$211,868.00 disbursement to New Media on October 27, as well as a \$10,000 disbursement to the San Diego County Democratic Party on October 29.

In the course of preparing the Post-General Report, Next Level identified that Crummitt had previously filed incomplete reports, and notified AFC. At this point, it became clear to AFC that Crummitt had not been reconciling its reports to the bank statements, as it was his responsibility to do. Accordingly, AFC instructed Next Level to conduct a complete reconciliation of the committee's 2016 reports, and to file a comprehensive set of amendments to correct the public record. AFC filed these amendments *sua sponte* between March 3 and March 24, 2017. And the Committee has revised its internal procedures to require that its reports are reconciled both by its compliance consultant and by Committee staff prior to filing.

Respondents regret the omissions in AFC's reports, but respectfully submit that enforcement against the committee would be inappropriate here. This is not a case where a committee failed to adequately supervise staff or devote the resources necessary to compliance. In order to ensure that its reports were timely and accurate, AFC incurred the extra expense of hiring an outside compliance firm that held itself out as having the skill and capacity to handle its accounting and report preparation. The error here was due to the firm's failure to abide by the Committee's instructions. And it involved a relatively limited number of transactions.

When AFC learned that it had filed incomplete reports due to vendor error, it promptly took corrective action. It hired another professional firm to conduct a complete audit of its reports, corrected the public record by filing a comprehensive set of amendments, and revised its internal procedures to prevent similar errors in the future. In light of Respondents' *sua sponte* corrective action, and the fact that the public record is now complete and accurate, Respondents respectfully submit that the Commission should not impose any civil penalty here, and should

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close the matter. However, to the extent that the Commission believes that enforcement is necessary here, this matter represents the type of routine reporting issue that would be best suited for referral to the Commission's Alternative Dispute Resolution program. *See, e.g.*, ADR 673.<sup>1</sup>

Sincerely,



Thomas A. Willis  
Andrew Harris Werbrock  
Counsel to Respondents

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(00304678-3)

<sup>1</sup> In any case, the Commission must reject the Complaint's assertion that the omissions were intentional or knowing, which is based on nothing more than rank speculation, *see* Statement of Reasons, Commissioners Mason, Sandstrom, Smith & Thomas, MUR 4960 (Dec. 21, 2000) ("Unwarranted legal conclusions from asserted facts . . . or mere speculation . . . will not be accepted as true."), and is belied by the fact that AFC began filing amended reports before Mr. Lacy even filed the Complaint and completed the amendments before it received the Complaint.